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keeping in mind the disadvantages implicit in either result, the Court would still seem best advised to

> refuse to order arbitration of a work assignment [or representational] dispute whenever only one of the contending unions would be a party to the arbitration proceeding. Whatever difficulties recourse to the NLRB may pose, that forum can produce a definite, peaceful solution at least some of the time. An arbitration proceeding with one of the vitally interested parties missing holds no such promise.[85]

If the decision holds little promise of a definitive solution in this type of situation, it does, at the same time, substantially reinforce the policy premium presently paid both arbitration and section 301 actions. Since arbitration will be accommodated even in such an inherently imperfect setting, it can certainly expect continued broad encouragement. Moreover, if the instant case does not present a problem of sufficient seriousness to require application of the preemption rationale, few, if any, other cases will, and the trend toward court determination of all alleged collective bargaining breaches is likewise strengthened. Thus, by not engrafting an exception to the *Smith* rationale[86] on these facts, the Court lends further support to the non-exclusiveness of section 301 actions, which may well be the primary significance of the opinion.

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Labor Law—Section 301 of LMRA—Refusal to Remand to State Court for Injunction for Breach of No-Strike Clause.—*H. A. Lott v. Hoisting & Portable Engineers' Union.*[1]—This is an action in contract brought in a state court by an employer against a union for damages and injunctive relief for breach of the no-strike clause in their collective bargaining agreement. The defendants petitioned for removal to the United States District Court, predicating jurisdiction on Section 301(a) of the Labor Management Relations Act (Taft-Hartley Act).[2] Upon removal the plaintiff moved in the District Court for remand of his petition to the state court for an injunction inasmuch as Section 4 of the Norris-LaGuardia Act[3] precludes the federal court from granting the equitable relief requested. On this motion to remand the court HELD: Under the removal statute[4] the suit for damages could be transferred to the federal court. Therefore, in the interests of a uniform approach to section 301 cases the court will

[85] Sovern, supra note 25, at 576.

[86] See quote in text, supra at note 14, Smith v. Evening News, supra note 12, at 197-98.

[1] 222 F. Supp. 993 (S.D. Texas 1963).

[2] Labor Management Relations Act § 301(a), 61 Stat. 156 (1947), 29 U.S.C. § 185(a) (1958).

[3] Norris-LaGuardia Act § 4, 47 Stat. 70 (1932), 29 U.S.C. § 104 (1958).

[4] Judiciary and Judicial Procedure § 1441(c), 62 Stat. 937 (1948), 28 U.S.C. § 1441(c) (1958).

retain jurisdiction over both the removable claim for damages and the non-removable claim for injunctive relief.

With the growing realization during the 1930's that greater public control of private economic concerns was a virtual necessity for the maintenance of a stable economy, there occurred a substantial increase in the size and importance of federal public law. The enactment of the National Labor Relations Act[5] (Wagner Act) was one of the more significant achievements of this era. The statute was accompanied by an obvious congressional purpose that this relatively new body of federal labor relations law should develop free from confusion and diverse interpretation. This would most certainly occur if state courts were permitted to serve as additional forums for the adjudication of matters with which this legislation was concerned. Hence the National Labor Relations Board was given exclusive jurisdiction to enforce the provisions of the act.

The United States Supreme Court's policy in favor of a uniform body of federal labor law came glaringly to the forefront when the NLRB began to systematically exercise certain of its discretionary powers under the Act. Starting in the 1940's the Board, first by a spotty case by case approach,[6] and later through more comprehensive administration pronouncements,[7] began to restrict its own jurisdiction so as to take action only when the unfair labor practice had a substantial effect upon interstate commerce. At the same time, over a period of almost two decades, the state courts had gradually begun to fill the vacuum left by this withdrawal of jurisdiction by the Board. Then, in 1957, the United States Supreme Court in *Guss v. Utah Labor Relations Bd.*[8] held that in view of congressional policy favoring a uniform body of federal labor law the states had no jurisdiction with respect to the settlement of a labor dispute affecting interstate commerce in an area covered by the National Labor Relations Act, despite the refusal of the Board to concern itself with this dispute. Congress, apparently dissatisfied with such a result, eliminated this no-man's-land effect left by the *Guss* case by a provision of the 1959 Labor Management Reporting and Disclosure Act[9] which specifically provides for state court jurisdiction where the Board has refused to take action.[10] Thus Congress, by amending the NLRA so as to provide greater jurisdiction for state tribunals in the area of labor relations law, made more difficult and dubious the Court's adherence to their policy of rigid uniformity of national labor law.

The Court's continued desire for uniform labor law can also be gleaned from a series of decisions[11] beginning in the 1950's in which the Court rather consistently held that the NLRA has preempted state court jurisdiction over common law actions and suits in equity involving torts or breaches of

[5] National Labor Relations Act, 49 Stat. 449 (1935), 29 U.S.C. § 151 (1958).

[6] Amalgamated Util. Workers v. Consolidated Edison, 309 U.S. 261 (1940).

[7] NLRB Press Release, R-342, Oct. 6, 1950.

[8] 353 U.S. 1 (1957).

[9] 73 Stat. 519 (1959), 29 U.S.C. § 401 (Supp. IV, 1963).

[10] 73 Stat. 541 (1959), 29 U.S.C. § 164(c)(2) (Supp. IV, 1963).

[11] Local 207, Int'l Ass'n of Bridge Workers v. Perko, 373 U.S. 701 (1963); San Diego Bldg. and Trades Council v. Garmon, 359 U.S. 236 (1959); Garner v. Teamsters Union, 346 U.S. 485 (1953).

contract where the defendant's conduct arguably constituted an unfair labor practice. In one of the earlier of these "preemption cases"[12] the Court concisely set forth its "uniformity position" when it said: "A multiplicity of tribunals and a diversity of procedures are quite as apt to produce incompatible or conflicting adjudications as are different rules of substantive law . . . ."[13]

This uniform approach seems to be based upon the Court's fear, as expressed by Justice Frankfurter, that "to allow the States to control activities that are potentially subject to federal regulation involves too great a danger of conflict with national labor policy."[14] The necessity of such a uniform approach has nonetheless been seriously questioned by members of the Labor Bar who, speaking directly to Mr. Justice Frankfurter's rationale, point out that conflict between state court decisions and NLRB rulings are virtually non-existent.[15] Indeed, the *advisability* of uniformity, at least to the extent of vesting such exclusive unfair labor practice jurisdiction in an administrative agency has of late been under considerable attack.[16]

The inherent disorder in the philosophy of uniformity came to the surface in the Court's decision in the 1957 case of *Textile Workers Union of America v. Lincoln Mills of Alabama*.[17] In interpreting Section 301 of the Taft Hartley Act as it applied to a suit in a federal court to enforce an arbitration clause equitably, the Court held that Congress intended that the federal judiciary develop a body of labor law under section 301 based on federal law. Then in a series of decisions dealing with section 301 handed down in 1962, the Court, deviating somewhat from this policy of uniformity, began to lay the groundwork for the problem faced by the federal district court in the *Lott* case.

In *Charles Dowd Box Co. v. Courtney*[18] the Court held that a state court was not preempted by section 301 from entertaining a petition for damages for breach of a collective bargaining contract and that the long series of preemption cases including *San Diego Bldg. Trades Council v. Garmon*[19] did not apply. The Court stated that the draftsmen of section 301 did not intend thereby to preempt the field so far as suits for breach of collective bargaining contracts are concerned. Then, as if to make this latter ruling consistent with their policy of "uniformity," the Court in *Lucas Flour Co. v. Local 174, Teamsters Union*[20] extended the doctrine

[12] Garner v. Teamsters Union, supra note 11.

[13] Garner v. Teamsters Union, supra note 11, at 490-91.

[14] San Diego Bldg. Trades Council v. Garmon, supra note 11, at 246.

[15] Sovern, Section 301 and the Primary Jurisdiction of the NLRB, 76 Harv. L. Rev. 529, 571 (1963).

[16] On August 27, 1963, Representative Landrum [co-sponsor of Labor Management Reporting and Disclosure Act, supra note 8] introduced H.R. 8246, a bill to divest the National Labor Relations Board of its jurisdiction over unfair labor practice cases, such jurisdiction to be assumed by the United States district courts. H.R. 8246, 88th Cong., 1st Sess., 109 Cong. Rec. 15196 (1963).

[17] 353 U.S. 448 (1957).

[18] 368 U.S. 502 (1962).

[19] Supra note 11.

[20] 369 U.S. 95 (1962).

of *Lincoln Mills*.[21] The Court ruled that state courts, although not preempted by section 301 from entertaining breach of contract suits, must apply federal labor law. Although effectively eliminating the possibility of two independent bodies of substantive labor law being applied under section 301, the Court had nonetheless made possible the very evil complained of in the *Garner* case—"a multiplicity of tribunals and a diversity of procedures [producing] incompatible or conflicting adjudications."[22]

Another substantial departure from its uniformity approach took place when the Court held in *Smith v. Evening News Ass'n*[23] that an individual employee's action to enforce a collective bargaining contract, the breach of which involved an unfair labor practice, was authorized by section 301 and hence was not preempted by the *Garmon* rule. Such suits, previously heard only before the Board, could now be brought to state courts under *Charles Dowd Box*.

The most significant of all these decisions, in terms of the above dichotomy, had been delivered by the Court just prior to the *Smith* case. In *Sinclair Ref. Co. v. Atkinson*[24] the Court held that a federal court was precluded from granting injunctive relief for breach of a no-strike clause in a section 301 action unless the circumstances of the case permitted such relief by the terms of the Norris-LaGuardia Act. Thus the Court's decision in the *Sinclair* case coupled with its other 1962 decisions mentioned above created the anomalous situation of the state courts, whose equitable powers remained untouched, becoming the only forum from which the plaintiff could obtain complete relief and hence the more desirable forum for section 301-type actions.

Lott appears to be the first case where a federal court, faced with the *Sinclair* decision, has decided to prevent state courts from becoming the preferred forum for section 301 actions. Rather than taking the position that Norris-LaGuardia simply precluded federal courts from *granting* certain equitable relief, and thereby escaping the problem involved in the remand question, the instant court, citing *National Dairy Prods. Corp. v. Heffernan*[25] held that Norris-LaGuardia precluded the federal court from *taking cognizance of an action* for injunctive relief. The court in the instant case went on, however, to hold that despite this jurisdictional incapacity (citing *National Dairy Prods. Corp. v. Heffernan*[26] and *Swift & Co. v. United Packinghouse Workers*[27]) the federal courts under Rule 12(h) of the Federal Rules of Civil Procedure were able to remove from a state court that which is normally a non-removable claim when it is joined with a removable claim. The removable claim in this case was one for damages for breach of a collective bargaining contract. It is at this point, however, that the court begins to depart from the position taken in these earlier federal cases.

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[21] Supra note 17.
[22] Supra note 11, at 490-91.
[23] 371 U.S. 195 (1962).
[24] 370 U.S. 195 (1962).
[25] 195 F. Supp. 153 (E.D.N.Y. 1961).
[26] Ibid.
[27] 177 F. Supp. 511 (D. Colo. 1959).

In *Swift & Co. v. United Packinghouse Workers*[28] where plaintiff's suit for damages and injunctive relief was removed to federal court, the court retained the damage petition, and remanded the petition for an injunction, holding that, although the applicable statute[29] gave the court discretion to remove non-transferrable claims if joined with transferrable claims "it would be incongruous to hold that the case, insofar as it seeks injunctive relief, is removable and then shortly thereafter hold that that part of the complaint is dismissed for lack of jurisdicton under Norris-LaGuardia."[30]

In *National Dairy Prods. v. Heffernan*,[31] where a suit for damages and injunctive relief had been transferred to federal court, the court agreed with the *Swift* decision but chose instead to dismiss the equitable claim for lack of jurisdiction (not upon the merits) rather than use the remand device, and in doing so stated that after refusal to remand such a dismissal *must* be issued. Thus the court in *Lott* has refused to follow the holding in *Swift*, to wit, despite any discretion which concededly is present, the court as a matter of propriety should remand back to the state court any case a part of which has doubtful jurisdiction. Nor did the court follow the decision in *Heffernan*, which case would seem even more difficult for the *Lott* court to ignore, in view of the former court's mandatory language with respect to the pertinent rule of civil procedure. On the contrary, rejecting the holdings in these cases the court in the principal case used its procedural powers to prevent the state courts from granting or even hearing the petitioner's claim for injunctive relief. The court here bases such exercise of its procedural powers on the belief that when the *Lincoln Mills* "uniformity of federal labor law" approach is read in conjunction with the Court's position against exempting section 301 actions in federal court from the provisions of the Norris-LaGuardia Act, the employer should not be allowed to seek an injunctive remedy in state court once the federal court has jurisdiction over the suit. Obviously the court is not holding that the *Sinclair* ruling extends to state court injunctive proceedings. This issue has not yet been decided. Indeed, Justice Stewart speaking for the majority in the *Dowd* case alluded to the case of *McCarrol v. Los Angeles County Dist. Council of Carpenters*[32] in which injunctive relief against a strike in violation of a no-strike clause was granted by a California court. Justice Stewart stated that to argue:

> that section 301(a) operates to deprive state courts of a substantial segment of their established jurisdiction over contract actions would . . . disregard the particularized history behind the enactment of that provision of the federal labor law. The legislative history makes clear that the basic purpose of section 301(a) was not to limit, but to expand, the availability of forums for the enforcement of contracts made by labor organizations.[33]

[28] Ibid.
[29] Supra note 4.
[30] Supra note 27, at 515.
[31] Supra note 25.
[32] 49 Cal. 2d 45, 315 P.2d 322 (1957).
[33] Supra note 18, at 508-09.

Nonetheless this limitation on availability of forums is exactly the effect of the decision in the *Lott* case. The Texas federal court, adhering to the Supreme Court's traditional uniformity obsession in an area where it has been largely discarded (albeit begrudgingly) by the Court itself, ignores what was virtually a congressional mandate and has worked a considerable hardship on the injured employer. The court in the interests of this questionable federal judicial policy has precluded the plaintiff from obtaining the most essential part of his petition—injunctive relief against further breaches of the no-strike clause by the defendant-union.

The United States Supreme Court's specific remark as to the absence of any ruling on their part with respect to the applicability of Norris-La-Guardia to state court injunction proceedings, coupled with the implications which obtain from the Court's statement as to the non-preemptive nature of section 301, would seem to have foreclosed any attempt by the district court to extend the *Sinclair* ruling to state court proceedings. It would thus appear that the district court's ruling in the *Lott* case was based on the more narrow ground that because the plaintiff's injunctive claim was brought in a state court *simultaneously* with his petition for damages, the discretionary remand procedure under Rule 12(h) of the Federal Rules of Civil Procedure will be used to prevent the state courts from granting such injunctive relief—injunctive relief which they could unquestionably have granted had plaintiff brought his injunction petition independently, postponing until a later date his petition for damages. Thus this court—in an effort to eliminate the threat posed by the *Dowd*, *Lucas*, *Sinclair*, and *Smith* cases to the doctrine of uniformity of law and uniformity of tribunals for the regulation of interstate commerce labor disputes—has resorted to the very procedural niceties, the absence of which had for so long been the hallmark of the federal judiciary.

THOMAS P. KENNEDY

Secured Transactions—Tortious Repossession of Inventory—Right of Debtor to Receive Notice of Disposition of Repossessed Collateral under Uniform Commercial Code.—*Skeels v. Universal C.I.T. Credit Corp.*[1]—In the spring of 1959, the plaintiff, a franchised Chrysler automobile dealer, agreed to let the defendant credit company finance the purchase of his automobiles. The defendant was to pay Chrysler Corporation for the cars, the cars were to be delivered to the plaintiff, and the plaintiff was to repay the defendant immediately upon selling the cars. At the time of contracting, or shortly thereafter, the defendant made a capital loan of $25,000 to the plaintiff, who, in the months that followed, was never in default on this loan but was often in default on the cars he sold. The defendant, however, disregarded these defaults, choosing not to enforce its rights under their security arrangement. By the fall of 1960, the plaintiff had fallen in arrears for the price of several cars. He thereupon applied for a second loan of $25,000, which request was forwarded through channels to the defendant's New York office where it

[1] 222 F. Supp. 696 (W.D. Pa. 1963).